

Pending claims:

Claims 1-26 remain pending. Claims 1, 5, 10, 16, 20, and 24 are in independent form.

Formal issues:

The Examiner did not point out any formal issues in the pending Official Action. Applicants have corrected a minor typographical error at page 4 of the application.

Rejections based on prior art:

1. Claims 1-3, 5-8, 10-14, 16-18, 20-22, and 24-26 were rejected under 35 U.S.C. § 103(a) as being obvious over Ohtake.

Applicants respectfully submit that Ohtake fails to teach or even suggest the subject matter set forth in independent claims 1, 5, 10, 16, 20, and 24, particularly with respect to determining an optimum paging channel power based on a pilot signal strength of a pilot signal received by a mobile station.

Ohtake (particularly with respect to Figure 12A, as noted by the Examiner) discloses a method for controlling an initial talk channel transmission power (see, for example, column 9, lines 59-67). Ohtake does not disclose or suggest determining an optimum paging channel power in accordance with a pilot signal strength, or transmitting a paging

message at the optimum paging channel power, as claimed. The Examiner acknowledges that Ohtake is deficient in this regard.

The Examiner asserts, without support, that it would have been obvious to control paging channel power to "provide the benefits of using minimum possible power for signaling between the base station and mobile station, thus contributing to the reduction in interference power in the system" (Official Action at page 3). Unfortunately, this is simply an unsupported conclusion of the Examiner, perhaps improperly augmented by hindsight knowledge of the Applicants' own disclosure (see, for example, page 2, lines 14-18 of the originally filed specification). The Examiner's unsupported assertions are not adequate to evidence what would or would not have been obvious (or even known) to one of ordinary skill. To the extent that the Examiner may assert that such knowledge would have been well-known, Applicants respectfully traverse in accordance with M.P.E.P. § 2144.03, and respectfully challenge the Examiner to point out evidence supporting his position or withdraw this argument.

In view of the foregoing, the Examiner has failed to show that one of ordinary skill would have been obviously motivated to apply the teachings of Ohtake to controlling paging channel power as in the presently claimed invention. Accordingly, claims 1, 5, 10, 16, 20, and 24 are patentably distinguishable over Ohtake, as are the respective claims

noted in connection with this rejection depending therefrom. Withdrawal of this rejection is therefore believed appropriate.

Ohtake also fails to teach or suggest:

forward loading of the base station, as in claims 2, 7, 11, 17, 21, and 25;

determining initial traffic channel power based on pilot signal strength, as in claims 3, 8, 14, 18, 22, and 26;

a controller supplying information indicative of an optimum paging channel power, as in claim 6; and

determining the optimum paging channel power in a base station, as in claim 12, or in the alternative, in the mobile switching center, as in claim 13.

As before, the Examiner asserts without support that one of ordinary skill would have applied Ohtake to the issue of paging channel power determination so as to arrive at the claimed invention. Again, this assertion is without support, except perhaps using hindsight knowledge of the claimed invention. Even if the Examiner's argument were reasonable, Ohtake is still completely silent with respect to the specific aspects of the present invention set forth in the dependent claims above.

In view of the foregoing, Applicants respectfully submit that the Examiner has failed to make a *prima facie* case of obviousness based on Ohtake. Withdrawal of this rejection is therefore believed appropriate.

2. Claims 4, 9, 15, 19, and 23 were rejected under 35 U.S.C. § 103(a) as being obvious over Ohtake in view of Chen. Applicants respectfully traverse.

Claims 4, 9, 15, and 23 all depend from independent claims which are patentable over Ohtake alone, as discussed above. Chen provides no teaching or suggestion in combination with Ohtake that would overcome the deficiencies of Ohtake alone, as discussed above. Accordingly, the respective independent claims from which claims 4, 9, 15, and 23 depend are still patentable over the combination of Ohtake and Chen. Claims 4, 9, 15, and 23 are therefore patentable by their dependence therefrom.

In addition, the Examiner has failed to show how the relied upon prior art, alone or in combination, would have motivated one of ordinary skill to modify Ohtake in view of Chen, as proposed. The Examiner asserts, without support, that it would have been obvious to modify Ohtake so as to be used in a CDMA system because a CDMA system would provide for greater utilization of wireless communication system capacity. This is the Examiner's conclusion, and not some teaching or suggestion present in Ohtake or Chen, either singly or in combination. Accordingly, the Examiner has failed to show how the cited prior art would have provided motivation to make the proposed combination.

Even if one of ordinary skill simply possessed knowledge of Ohtake and Chen, this is, alone, inadequate to establish obviousness.

Motivation to combine must be shown. See, for example, Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (assertion that modification of prior art would have been "well within the ordinary skill of the art" because the elements of the claimed invention were known individually is alone inadequate to establish obviousness).

In view of the foregoing, claims 4, 9, 15, 19, and 23 are patentably distinguishable over the relied upon prior art. Withdrawal of this rejection is therefore believed appropriate.

Conclusion:

In view of the foregoing, Applicants respectfully submit that all pending claims are in condition for allowance, and that this application as a whole is in condition for allowance. Early and favorable notice to this effect is therefore solicited.

In the event that any matters remain at issue in the application, the Examiner is invited to contact Mike S. Ryu, Reg. No. 38,604 at (703) 205-8000 in the Northern Virginia area, for the purpose of a telephonic interview.

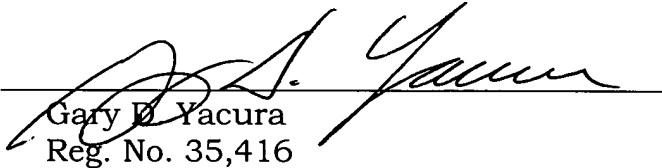
Pursuant to 37 C.F.R. 1.17 and 1.136(a), the Applicants respectfully petition for a two (2) month extension of time for filing a response in connection with the present application, and the required fee of \$380.00 is attached.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 12-2325 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


Gary B. Yacura
Reg. No. 35,416

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

GDY/MSR:ewd